

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION TWO

LAURIE MARIE LASKEY,  
Plaintiff and Appellant,

v.

AT&T CORPORATION,  
Defendant and Respondent.

A123801

(Sonoma County  
Super. Ct. No. SCV-242043)

Laurie Marie Laskey filed in propria persona a first amended complaint (FAC) alleging negligence and other torts against AT&T Corporation (AT&T Corp.). AT&T Corp. demurred and the trial court sustained the demurrer without leave to amend. Laskey appeals from the order sustaining the demurrer. The FAC is not in the record on appeal and Laskey has therefore not met her burden of establishing error. Accordingly, we conclude that the lower court properly sustained the demurrer without leave to amend.

**BACKGROUND**

On December 26, 2007, Laskey filed a complaint against AT&T Corp., alleging causes of action for general negligence, intentional tort, and products liability. She also alleged claims of “computer crimes, identity theft, products liability, FCC violations, technical violations, code violations, split tunneling, etc.” She claimed the following: AT&T Corp. “was maintaining a service at my residence that I wasn’t aware of being connected too [*sic*]. Created premise liability. Theft of my identity. Allowed hacking.”

Under her cause of action for general negligence, she asserted that she suffered the injury on January 31, 2002.

AT&T Corp. filed a demurrer, which the trial court sustained with leave to amend.

On June 26, 2008, Laskey filed an FAC, which is not included in the record on appeal.<sup>1</sup> On July 31, 2008, AT&T Corp. filed a demurrer to the FAC. The court sustained AT&T Corp.'s demurrer without leave to amend. The court found that the statute of limitations barred Laskey's claims for general negligence, intentional tort, and product liability in her FAC.

On December 29, 2008, Laskey filed her notice of appeal.

## **DISCUSSION**

### ***I. Jurisdiction***

No judgment of dismissal has been entered in this matter and Laskey is appealing from the order sustaining the demurrer. "An order sustaining a demurrer without leave to amend is *not* an appealable order; only a judgment entered on such an order can be appealed." (*I.J. Weinrot & Son, Inc. v. Jackson* (1985) 40 Cal.3d 327, 331, superseded by statute on another issue.) "The existence of an appealable judgment is a jurisdictional prerequisite to an appeal." (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126.)

Ordinarily we would dismiss this appeal as being premature, but AT&T Corp. has addressed the merits of the appeal and has not requested dismissal on this basis. We may deem the order sustaining the demurrer without leave to amend as incorporating the judgment of dismissal in order to prevent further delay. (See, e.g., *Hinman v. Department of Personnel Admin.* (1985) 167 Cal.App.3d 516, 520, superseded by statute on another issue [court has discretion to consider on the merits an appeal from an order sustaining a demurrer without leave to amend].) To avoid delay we deem the order sustaining the demurrer as incorporating the judgment of dismissal and decide Laskey's appeal on its merits.

---

<sup>1</sup> The record includes the register of actions in the lower court.

## **II. Standard of Review**

The standard of review governing an appeal from the judgment after the trial court sustains a demurrer without leave to amend is well established. “ ‘We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.’ [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff. [Citation.]” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Additionally, we note that Laskey is in propria persona, but a party appearing in propria persona “is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys.” (*Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1210.) “ ‘[T]he in propria persona litigant is held to the same restrictive rules of procedure as an attorney.’ ” (*Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125-1126; accord, *First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 958, fn. 1.)

## **III. Laskey Has Failed to Demonstrate Error**

Laskey did not designate the FAC or AT&T Corp.’s demurrer to the FAC as part of the record on appeal. No party has provided this court with these documents and therefore we cannot review these critical documents. Since an appealed judgment is always presumed correct and the appellant has the burden of overcoming this presumption by affirmatively showing error on an adequate record (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141), Laskey cannot demonstrate any error (see

*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502) and we must affirm the lower court's order.<sup>2</sup>

In reviewing an order sustaining a demurrer, this court must determine whether the factual allegations of the complaint are adequate to state a cause of action. Without at least the FAC, we have nothing to review and no basis for ascertaining error. We therefore cannot move beyond our starting presumption that appealed judgments and orders are correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is the appellant's burden to overcome this presumption and affirmatively show error by providing not only argument but also an adequate record establishing the alleged error. When the appellant fails to supply an appellate record sufficient for meaningful review, "the appellant defaults and the decision of the trial court should be affirmed." (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1051, fn. 9; accord, *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296; *Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.)

Laskey has not met her burden as appellant to demonstrate error; thus, the presumption of correctness remains and the challenged order must be upheld. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575; *Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000, 1003; *Hernandez v. California Hospital Medical Center, supra*, 78 Cal.App.4th at p. 502.)

---

<sup>2</sup> We note that, not only is the record inadequate, but Laskey's brief does not comply with the California Rules of Court. Her brief violates the California Rules of Court, rule 8.204(a)(1) by not containing a statement of appealability, omitting a table of contents, failing to provide citations to the record, not including a statement of the action's procedural history, and not containing a summary of significant facts limited to matters in the record. Laskey also has failed to provide any pertinent legal argument and has not explained the relevance of the various federal statutes that she does cite. (See, e.g., *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979 [" "This court is not required to discuss or consider points which are not argued or which are not supported by citation to authorities or the record' "].)

## **DISPOSITION**

The judgment is affirmed. AT&T Corp. is awarded costs.

---

Lambden, J.

We concur:

---

Kline, P.J.

---

Richman, J.